

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, November 23, 2015

Flynn Faculty Workshop Room – Room 6500

SJ Quinney Law School

Salt Lake City, Utah

**Chief Justice Matthew B. Durrant, Presiding**

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. David Mortensen  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Randall Skanchy  
Hon. Kate Toomey  
John Lund, esq.

### **EXCUSED:**

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Debra Moore  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Alison Adams-Perlac  
Nancy Sylvester  
Brent Johnson  
Alyn Lunceford  
Stacey Snyder

### **GUESTS:**

Colin Winchester  
Hon. Todd Shaughnessy  
Dean Robert Adler  
Hon. Noel Hyde  
Shane Bahr  
Hon. Brendan McCullagh  
Derek Olson, Legis. Audit  
Jesse Martinson, Legis. Audit  
Tyler Jordan Felt  
Brad Christopherson, Farmington

#### **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. A special welcome was extended to Mr. Derek Olsen and Mr. Jesse Martinson of the Legislative Auditor's Office.

**Motion:** Judge Skanchy moved to approve the minutes from the October 26, 2015 Judicial Council meeting. Judge Higbee seconded the motion, and it passed unanimously.

#### **2. OATH OF OFFICE: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the Oath of Office to Judge Mary Noonan.

**3. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reported on the following items: 1) he, Mr. Becker, Mr. Wahl, and Mr. Schwermer met with the Governor to discuss the following items: 1) Report on the Representation of Indigent Criminal Defendants in Trial Courts, 2) Pretrial Release efforts, 3) Justice Reinvestment and the importance of funding treatment, and 4) judicial compensation with regard to funding of the remainder of the recommendations of the Elected Offices and Judicial Compensation Commission. Mr. Becker addressed the courts performance standards over the past five years, as well as, the courts budget requests for the 2016 Legislative Session.

**4. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

GAL Director. Mr. Becker introduced Ms. Stacey Snyder, new GAL Director. He provided background information of her work experience.

Judicial Retirement. Judge James Davis, Court of Appeals, retired effective November 16. Mr. Becker noted that he is one of the original members of the Court of Appeals. He served two terms on the Council, as well as, part of a third term. The Governor's office may try to fill both Court of Appeals vacancies at the same time.

Communication Director. Ms. Nancy Volmer accepted a position outside of the court system, and she will be leaving the first week of December. Mr. Becker acknowledged all she has done, on behalf of the courts.

Supreme Court Task Force to Examine Legal Licensing. The final report was presented to the Supreme Court on November 18. The Supreme Court approved all of the recommendations. The report will be presented to the Judicial Council in December.

Judicial Performance Evaluation Commission. Ms. Slotnik, Director of JPEC, has announced her upcoming retirement, effect March 2016.

Drug Court Conference. The conference was held on October 29-30 with over 380 in attendance.

**5. COMMITTEE REPORTS:**

***Management Committee Report:***

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

***Liaison Committee Report:***

No meeting was held in November. The Liaison Committee is scheduled to meet following the December Council meeting.

***Policy and Planning Meeting:***

Judge Parkin reported on the following items: 1) no meeting was held in November, 2) a rule for public comment has been included on the consent calendar, and 3) the Policy and Planning Committee is scheduled to meet in December.

***Bar Commission Report:***

Mr. Lund reported on the following items: 1) the Bar Commission is soliciting proposals for a lobbyist, 2) an extensive report has been prepared by Mr. Bruce Matt who studied the Office of Professional Conduct (OPC) relative to attorney discipline, 3) Ms. Tara Issacson has been awarded the Professionalism of the Year Award, 4) Ms. Anne Burkholder, YWCA, has

been awarded the Community Member of the Year Award, and 5) the Fall Forum was recently held with over 300 in attendance.

**6. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer highlighted the following in his legislative update: 1) bill drafts are being submitted, 2) separate sponsors for the judgeship requests, 3) JRI – panel, 4) warrant summons presentation, 5) guardianship bill, and 6) numbered bills within the first two weeks of December.

Mr. Schwermer mentioned that the Judicial Performance Evaluation Commission (JPEC) is making decisions relative to judges up for retention election in 2016. Judges who failed any part of the minimum performance standards were notified last week to meet with members of the Commission. Concern was expressed with the low survey response rate for judges.

**7. JUDICIAL CONDUCT COMMISSION UPDATE: (Colin Winchester)**

Chief Justice Durrant welcomed Mr. Winchester to the meeting.

Mr. Winchester highlighted the following on his update: 1) several members of the Judicial Conduct Commission will have their terms expiring between now and June 2016, and 2) in the last fiscal year, the Commission received 70 complaints compared to the average of 80 complaints per year in past years.

Questions were asked of Mr. Winchester, and he provided responses.

Chief Justice Durrant thanked Mr. Winchester for his update.

**8. LANGUAGE ACCESS REPORT: (Alison Adams-Perlac)**

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac highlighted the following in her report: 1) she acknowledged the work being done, on behalf of the courts, relative to language access by Ms. Rosa Oakes; 2) acknowledged Mr. Ethan Taft, Masters of Statistics student at the University of Utah, who provided the data analysis for the report; 3) English proficiency in Utah, 4) interpreter credentialing types – certified, approved, and registered; 5) interpreter availability; 6) percentage of hours interpreted by language; 7) interpreted hearings by type of court – district, juvenile or justice court; 8) interpreter and travel costs; 9) use of staff interpreters in the Third District; 10) data sources used in preparing the report; 11) remote interpretation program; and 12) reviewed the recommendations of the Language Access Committee.

The recommendations made on behalf of the Language Access Committee included the following: 1) implement a system to capture the video record in hearings involving ASL and deaf interpreters, 2) study the process and cost for extending interpreting from telephonic appearances to video conferences, and 3) study ways to fund the development of a computer program to collect interpreter data and to better track the use of interpreters and the associated costs.

Questions were asked of Ms Adams-Perlac, and she provided responses to questions asked of her.

Chief Justice Durrant thanked Ms. Adams-Perlac for her update.

**9. PRE-TRIAL RELEASE PRACTICES REPORT: (Judge Todd Shaughnessy, Alison Adams-Perlac, and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Shaughnessy, Ms. Adams-Perlac, Ms. Sylvester and Judge Brendan McCullagh to the meeting.

Judge Shaughnessy highlighted the following in his report: 1) provided his background on his experience with pretrial release on the district court bench, 2) committee's charge – a)

determine what constitutes “best practices in the field of pretrial release; b) conduct an inventory of current practices and assess both their effectiveness and the extent to which they are consistent with best practices in the field; c) determine how best to improve the information needed by judges when making a release decision, including evaluating evidence-based assessment tools and instruments; d) review the statutory history of release and bail legislation; and, e) evaluate pretrial release alternatives in terms of public protection, the integrity of the court process, the ability to guard against punishment prior to conviction, and cost implications or savings potential; 3) committee membership; 4) surveyed other states on their pretrial release and supervision practices; 5) reviewed national statistics, 5) surveyed Utah’s county jails, noting response rates; 6) reviewed Utah statistics; 7) reference to Utah Code Ann. 77-20-1(2) relative to pretrial release as risk management; and 8) recommendations.

To implement the recommendations and develop better pretrial release and supervision practices, the Committee proposed the following actions be taken: 1) amend the monetary bail statutes, 2) amend the Rules of Criminal Procedure, 3) implement the Board of District Court Judges recommendations, 4) develop pretrial risk assessments, 5) develop pretrial supervision systems, and 6) remove old, unnecessary structures and create new ones.

Discussion took place.

Questions were asked of Judge Shaughnessy, and he provided responses to questions asked of him.

Chief Justice Durrant thanked Judge Shaughnessy, on behalf of the Pretrial Release and Supervision Committee.

**Motion:** Mr. Lund moved to accept the report with the direction and staffing of the committee to be discussed by the Management Committee. Any rule changes relating to the establishment of a standing committee on pretrial release will be considered at the December Judicial Council meeting. Judge Higbee seconded the motion, and it passed unanimously.

**10. COMMENTS FROM THE DEAN OF THE SJ QUINNEY LAW SCHOOL: (Dean Robert Adler)**

Chief Justice Durrant welcomed Dean Adler to the meeting.

Dean Adler welcomed everyone to the law school. He highlighted the following relative to the SJ Quinney Law School: 1) one purpose and design aspect of the building is to increase engagement with the courts, the Utah State Bar, and the legal community; 2) Judicial Process and Clinic Program; 3) measures taken to address the drop in enrollment; 4) expansion of certain programs; 5) involvement with access to justice issues; 6) proposal to seek funding to open a legal clinic on campus – Law for You – to serve the university community; and 7) training – providing more clinical training.

Dean Adler requested feedback from members of the judiciary using law students as clerks in their courts.

Chief Justice Durrant thanked Dean Adler for his comments, on behalf, of the SJ Quinney Law School.

**11. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Noel Hyde and Ms. Debra Moore)**

Chief Justice Durrant welcomed Judge Hyde to the meeting.

Judge Hyde highlighted the following in his update on the activities of the Board of District Court Judges update: 1) goals for the coming year, 2) proposed change to Rule 3-108 – Judicial assistance relative to the appointment of senior judges due to retirement, disability or death of a sitting judge; 3) the Board of District Court Judges concern with a potential online

dispute resolution program; 4) preparation of a post-conviction relief bench book; and 5) e-signing protocols currently in place.

The current board goals include: 1) update the weighted caseload formula and include another evaluation, 2) continued focus on uniform standards/recommendations relative to mental health courts, 3) pre-trial release efforts – continued review, and 4) implementation of JRI— focus on determining appropriate remedies relative to district court and how best to implement the recommendations.

Chief Justice Durrant thanked Judge Hyde for his update.

**12. DOMESTIC STUDY: PROPOSED CHARGE: (Daniel J. Becker)**

Mr. Becker reminded the Council of their request, at the October Council meeting, for preparation of a draft charge of the domestic study item and a determination of whether the item should be considered as a Council study item or should be studied by the Standing Committee on Children and Family Law (SCCFL).

Mr. Becker highlighted the following relative to the proposed Domestic Case Process Improvements study item: 1) recommendation of the study item to be conducted by the Standing Committee on Children and Family Law (SCCFL), 2) the study should be limited to domestic cases and shall not include juvenile delinquency or child welfare proceedings, 3) the findings and recommendations to be presented to the Judicial Council at the July 2017 meeting, 4) proposed membership of a separate subcommittee of the Standing Committee was reviewed, and 5) the proposed charge was reviewed by the Management Committee at the November 10 meeting.

Discussion took place. An amendment to the charge was suggested relative to programs in place in other jurisdictions.

**Motion:** Judge Higbee moved to approve the Domestic Case Process Improvements Study Item – Committee Charge as amended. Mr. Lund seconded the motion, and it passed unanimously.

**13. FARMINGTON/DAVIS COUNTY JUSTICE COURT: (Rick Schwermer)**

Mr. Schwermer updated the Council on the Farmington/Davis County Justice Court Inter-local Agreement.

Mr. Brad Christopherson, Farmington City, was in attendance at the meeting.

Mr. Schwermer noted that Davis County has determined that it is not necessary to enter into an interlocal agreement with all participating government entities. They are prepared to move forward with the Davis County Justice Court, as operated in the past, and hear the necessary cases.

At the July 20 Judicial Council meeting, the Council approved the creation of the Farmington Justice Court, allowing them to enter into an interlocal agreement with the interested governing entities and to waive the required notice period allowing them to begin operation on January 1, 2016.

Resulting from the decision made by Davis County to continue with their justice court, Farmington City expressed their intent and request to withdraw their request made and approved at the July 20 Judicial Council meeting to create a new court by entering into an interlocal agreement with the participating government entities.

**Motion:** Judge Skanchy moved to approve Farmington City's request to withdraw their request approved at the July 20 Judicial Council meeting to enter into an interlocal agreement with the participating government entities. Judge Marx seconded the motion, and it passed unanimously.

**14. FOURTH DISTRICT LAW CLERK/BAILIFF ISSUE: (Daniel J. Becker and Shane Bahr)**

Chief Justice Durrant welcomed Mr. Bahr to the meeting.

Mr. Becker provided background information on the law clerk/bailiff program which has been in place for 20 years. The bailiffs split their time between bailiff and law clerk duties, by agreement between the courts and sheriff's office.

The sheriff's office has been moving toward discontinuing this program, which is unique to Utah County. Last year, the county changed the classification of the law clerk/bailiff position from a classified position to a contractual position which eliminated the benefits that the law clerk/bailiffs received. This created a problem in the Fourth District in filling law clerk vacancies.

Discussion has taken place to determine what action needs to take place relative to law clerks in the Fourth District. To create a law-clerk program in the Fourth District, it will require \$450,000 in permanent funds.

Mr. Becker reviewed a proposal for incrementally creating law clerk positions for the Fourth District to coincide with the occupancy of the new Provo Courthouse in 2018.

Mr. Bahr commented on discussion that has taken place with Sheriff Tracy relative to the law clerk/bailiff issue.

Discussion took place.

**Motion:** Judge Higbee moved to approve, in concept, the need to address ongoing funding requirements necessary for establishing a law clerk program in Utah County and to restore the benefits eliminated when the law clerk/bailiff position in Utah County was changed to a contractual position instead of a classified position, in April. Judge Toomey seconded the motion, and it passed unanimously.

**15. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)**

Judge James Davis has applied for certification as an active senior judge. He is in compliance with the minimum performance standards.

**Motion:** Judge Skanchy moved to forward the recommendation, on behalf of the Council, to the Supreme Court to appoint Judge James Davis as an active senior judge. Judge Toomey seconded the motion, and it passed unanimously.

**Motion:** Judge Skanchy moved to enter into an executive to discuss the character, competence of an individual. Judge Higbee seconded the motion, and it passed unanimously.

**16. EXECUTIVE SESSION**

An executive session was held at this time.

**17. ADJOURN**

The meeting was adjourned.



# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

## Sworn Statement under Rule 2-103(5)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

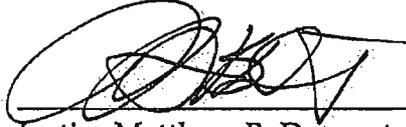
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I, Justice Matthew B. Durrant, state as follows:

1. On 11-23-15 (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:
  - the character, competence, or physical or mental health of an individual;  
*and potential litigation*
  - the deployment of security personnel, devices, or systems.
2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.

I declare under penalty of perjury that the statements made in this document are true and correct.

11-23-15  
Date

  
Justice Matthew B. Durrant  
Chair, Utah Judicial Council

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

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